

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE DELACRUZ,

Plaintiff,

-v-

CITY OF NEW YORK and JOHN DOES ONE
THROUGH TEN

Defendants.
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15 Civ. 3030 (PAE) (JCF)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Pro se plaintiff Jose Delacruz brings this action under 42 U.S.C. § 1983 alleging that the mattress he was issued while incarcerated caused him severe pain, and that defendants interfered with his legal mail. Before the Court is the May 31, 2017 Report and Recommendation of the Hon. James C. Francis, United States Magistrate Judge, recommending that the Court grant summary judgment in favor of defendants as to all of Delacruz's claims. Dkt. 61 ("Report"). For the following reasons, the Court adopts this recommendation.

I. Background

The Court incorporates by reference the summary of the facts provided in the Report. *See* Report at 1.

On April 9, 2015, DelaCruz filed a Complaint. Dkt. 2. On May 18, 2015, the Court accepted this case as related. On May 19, 2015, the Court issued an Opinion, allowing DelaCruz to amend his Complaint, in order to state a legally cognizable cause of action. Dkt. 5. On July 6, 2015, DelaCruz filed an Amended Complaint. Dkt. 7. On July 9, 2015, the Court referred this case to Magistrate Judge James C. Francis for Report and Recommendation. Dkt. 8. On January

27, 2016, DelaCruz filed a Second Amended Complaint. Dkt. 25. On February 11, 2016, defendants answered the Second Amended Complaint. Dkt. 26.

On January 27, 2017, following the close of discovery, defendants moved for summary judgement, Dkt. 47, and filed a memorandum of law in support of their motion, Dkt. 48. On March 14, 2017, DelaCruz filed an affirmation in opposition to defendants' motion for summary judgment. Dkt. 57. On April 4, 2017, defendants filed a reply memorandum of law in support of their motion for summary judgment. Dkt. 58.

On May 31, 2017, Judge Francis issued the Report, recommending that the Court grant defendants motion for summary judgment against DelaCruz. Objections were due by June 14, 2017. *See* Report at 12. To date, the Court has received no objections.

II. Discussion

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As neither party has submitted objections to the Report, review for clear error is appropriate. Because the Report explicitly states that “[f]ailure to file timely objections will preclude appellate review,” Report at 13, both parties' failure to object operates as a waiver of

appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).


Careful review of Judge Francis's thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. The Court therefore grants defendants' motion for summary judgment.

CONCLUSION

For the foregoing reasons, the Court grants defendants' motion for summary judgment. The Clerk of Court is directed to terminate the motion pending at docket number 47, and to close this case.

The Court directs the Clerk to mail a copy of this decision to plaintiff at the address on file.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: July 11, 2017
New York, New York